

March 25, 1999

GSA/FSS/FCXC
ATTN: Rosemarie Dunn, Contract Specialist
GSA Smart Pay Program
1941 Jefferson Davis Highway, Room 507
Arlington, VA 22202

RE: Sales Tax Exempt Status

Dear Ms. Dunn:

This letter is in response to your letter dated February 24, 1999, asking if the State of South Dakota will extend sales tax exempt status to purchases made with federal government credit cards issued under the GSA Smart Pay program. I apologize for my delay in response to your request.

Per South Dakota Codified Law (SDCL) 10-45-10, the sale of tangible personal property to the federal government is exempt from South Dakota and municipal sales tax. Payment must be made by the government and the merchandise or service for use by the government.

Administrative Rule (ARSD) 64:06:01:01.02, states that before purchases by a government or its subdivisions are exempted by the South Dakota Department of Revenue, proof is required from the retailer that such sales were actually paid with government funds. No special exemption certificates are necessary when making sales to a governmental entity. The billing invoice should indicate a sale to a governmental entity and documentation must be kept to prove that payment was received from the governmental entity. A receipt from a credit card issued to, and in the name of the governmental entity is satisfactory.

I have enclosed copies of SDCL 10-45-10 and ARSD 64:06:01:01.02 for your reference. If you have any additional questions, please contact my office.

Sincerely,



Scott A. Rounds
Sr. Revenue Agent
Business Tax Division

Enclosures: 10-45-10, 64:06:01:01.02



§ 10-45-10. Exempt sales to states, municipalities, charities and Indian tribes.

There are hereby specifically exempted from the provisions of this chapter and from the computation of the amount of tax imposed by it, the gross receipts from sales of tangible personal property and the sale, furnishing or service of electrical energy, natural and artificial gas and communication service to the United States, to the State of South Dakota or to any other state of the United States or the District of Columbia if the other state provides a reciprocal exemption for South Dakota, to public or municipal corporations of the State of South Dakota or of any other state of the United States or the District of Columbia if the other state provides a reciprocal exemption to South Dakota public or municipal corporations, to any nonprofit charitable organization which devotes its resources exclusively to the relief of the poor, distressed or underprivileged, and has been recognized as an exempt organization under § 501(c)(3) of the Internal Revenue Code, or to any Indian tribe.

Source: SDC 1939, § 57.3202 (5); SL 1939, ch 269; 1974, ch 101, § 1; 1975, ch 104; 1979, ch 84, § 8; 1983, ch 88, § 1; 1984, ch 87; 1987, ch 100.

64:06:01:01.02. Sales to governmental agencies. Before purchases by a government or its subdivisions are exempted by the Department of Revenue, proof is required from the retailer that such sales were actually paid out of government funds. The test is whether merchandise purchased is paid out of funds of an organization connected with the government.

No special exemption certificate is necessary when making sales to the United States, tribal governments, the District of Columbia, the State of South Dakota, other states, and their subdivisions if the billing or invoices indicate such sales and the records show that payment was received from the exempt governmental entity or that the purchases were made by a credit card issued to and in the name of the exempt governmental entity.

State boards and commissions created by law are exempt from sales or use tax. Boards and commissions created by legislative act are part of state government and sales to them are sales to the state.

This exemption does not extend to sales to or purchases of tangible personal property for the personal use of officials, members, or employees of such institutions or to sales to or purchases of tangible personal property used in the operation of a taxable retail business.

Source: SL 1975, ch 16, § 1; 2 SDR 40, effective December 8, 1975; 8 SDR 81, effective January 10, 1982; 11 SDR 1, effective July 19, 1984; 13 SDR 129, 13 SDR 134, effective July 1, 1987; transferred from § 64:06:01:48, 16 SDR 76, effective November 1, 1989; 19 SDR 42, effective September 29, 1992; 21 SDR 219, effective July 1, 1995; 22 SDR 6, effective July 23, 1995.

General Authority: SDCL 10-45-47.1.

Law Implemented: SDCL 10-45-10.